WISCONSIN SUPREME COURT CALENDAR
AND CASE SYNOPSES
MARCH 2010

Please note, cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol.

This calendar includes cases that originated in the following counties:

Dane
Fond du Lac
Iowa
Milwaukee
Rock
St. Croix
Walworth

TUESDAY, MARCH 2, 2010

9:45 a.m.	08AP2231-CR	State v. Michael R. Hess
10:45 a.m.	08AP658-CR	State v. Michael A. Sveum
1:30 p.m.	08AP2937	Mercycare Ins. Co. v. Wisconsin Commissioner of Insurance

WEDNESDAY, MARCH 3, 2010

9:45 a.m.	08AP2812	Glen D. Hocking v. City of Dodgeville
10:45 a.m.	08AP1303	Roehl Transport, Inc. v. Liberty Mutual Insurance Company
1:30 p.m.	08AP170	Walter Tatera, et al. v. FMC Corporation

TUESDAY, MARCH 9, 2010

9:45 a.m.	08AP89	Michael Pries v. Raymond McMillon
10:45 a.m.	08AP3135	Society Insurance v. Labor & Industry Review Commission
1:30 p.m.	09AP661-D	Office of Lawyer Reg. v. Stanton E. Thomas

The Supreme Court calendar may change between the time you receive this synopsis and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-271-4321. Summaries provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
TUESDAY, MARCH 2, 2010
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a Walworth County Circuit Court decision, Judge James L. Carlson, presiding.

2008AP2231-CR State v. Michael R. Hess

In this case, the Supreme Court is asked to review the applicability of the "good-faith exception" to the exclusionary rule as it relates to evidence gathered as a result of an improperly issued arrest warrant.

Some background: Michael R. Hess was convicted in Walworth County of operating a motor vehicle while intoxicated, sixth offense. The judge ordered a presentence investigation and ordered Hess not to consume alcohol while on bond awaiting sentencing.

After Hess failed to respond to requests to be interviewed for a pre-sentence investigation, the judge ordered a civil bench warrant for his arrest. The deputy arresting Hess smelled alcohol on his breath, and a subsequent blood test confirmed his blood-alcohol concentration was 0.118 percent. As a result, Hess was charged with, and ultimately convicted of, felony bail jumping.

Hess had filed a motion to suppress the evidence of his alcohol consumption, arguing that it was seized as a result of an illegal arrest warrant. The circuit court denied the motion, concluding that the warrant was valid, and that the deputy acted in good faith in making the arrest.

Hess appealed, and the Court of Appeals reversed and remanded for a new trial. The Court of Appeals concluded that the circuit court should have suppressed the evidence because the circuit court had no authority to issue the arrest warrant, writing, in part: "…We therefore hold that a warrant issued by a judge without any authority whatsoever to do so is void, any search or seizure pursuant to that void warrant is not clothed with judicial authority, and the good faith exception does not operate to save the evidence seized."

The state contends that the good-faith exception to the exclusionary rule should apply here because the error in issuing the warrant was one of solely judicial error. It asserts that the exclusionary rule was designed to deter police misconduct and that law enforcement did not engage in any misconduct in arresting Hess.

The state also notes that this appears to be the first case in Wisconsin addressing the application of the good faith exception in the context of an arrest warrant rather than a search warrant.

WISCONSIN SUPREME COURT
TUESDAY, MARCH 2, 2010
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a Dane County Circuit Court decision, Judge Steven D. Ebert presiding.

2008AP658 State v. Michael A. Sveum

In this criminal case, the Supreme Court is asked to consider whether a defendant's constitutional rights or Wisconsin Statutes were violated when police placed a global positioning system (GPS) device on his vehicle and recorded its movements.

Some background, according to the Court of Appeals: Sveum was convicted of stalking a woman in 1996 and was later imprisoned for related crimes against her. In 1999, from prison, he began stalking the same woman again with help from his sister. Sveum continued stalking the woman when he was released from prison in 2002.

In March 2003, the woman reported to the police that she believed Sveum was stalking her again. Police sought and received an order authorizing them to covertly attach a GPS device to Sveum's car in order to track it. Based in part on tracking information retrieved from the GPS device, the police obtained a warrant to search one of Sveum's residences and his car. The search revealed additional evidence incriminating Sveum, along with evidence confirming his sister's involvement.

Sveum was charged with an aggravated stalking offense under Wis. Stat.. § 940.32(2) and (3)(b) (2001-02), as party to a crime. The more serious "aggravated" version of the crime was charged based on Sveum's previous conviction for stalking the same woman. See § 940.32(3)(b).

The circuit court denied motions by Sveum to suppress evidence obtained from the GPS device and from the search of his residence and car. A jury found Sveum guilty, and the court sentenced him to seven years and six months in prison followed by five years of extended supervision.

Sveum appealed, and the Court of Appeals concluded that no Fourth Amendment search or seizure occurred when the police attached the device to his vehicle while it was parked in a public place, and then used the device to track the vehicle in public view.

Sveum, who is representing himself, asks the Supreme Court to determine whether the placement of the GPS device and recording of his vehicle's location violated the Fourth Amendment. He also asks the Supreme Court to review whether Wisconsin's electronic surveillance law, Wis. Stat. § 968.27-.37, requires the police to obtain judicial approval to place a GPS device on a vehicle to record its travel.

Contrary to Sveum's position, the state contends the Court of Appeals followed precedent of the Wisconsin Supreme Court and the United States Supreme Court. Further, assuming Sveum had a Fourth Amendment interest requiring the suppression of information obtained while his car was in the garage, suppression of all the information concerning the whereabouts of his car while it was on public thoroughfares would not be required. The state says the Court of Appeals correctly held that the GPS is a "tracking device" specifically excluded from the definition of "electronic communication" under Wisconsin's Electronic Surveillance Control Law.

WISCONSIN SUPREME COURT
TUESDAY, MARCH 2, 2010
1:30 p.m.

This is a certification from the Wisconsin Court of Appeals, District IV, headquartered in Madison. The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Rock County Circuit Court, Judge James Welker, presiding.

2008AP2937 Mercycare v. Wisconsin Commissioner of Insurance

In this certification, the Supreme Court is asked to decide if Wis. Stat. § 632.895(7) permits an insurer to exclude maternity coverage for a surrogate mother and how much deference should be given to a decision by the Wisconsin Office of the Commissioner of Insurance (OCI).

Some background: In 2002, MercyCare Insurance Company and MercyCare HMO, Inc. filed a certificate with the OCI excluding "surrogate mother services" from pregnancy benefits. The services being excluded were not defined in the certificate, which was approved by the OCI.

While covered by MercyCare, two women entered into agreements to be gestational carriers for other parents. Each woman subsequently became pregnant with children to whom they were not genetically linked.

Based on the language of the 2002 contract, MercyCare denied coverage for benefits received by the women during their pregnancies, and one of the women filed a complaint with the OCI.

While OCI was reviewing the denials, MercyCare in 2005 filed a new policy form revising the exclusions and containing a definition of "surrogate mother." The OCI disapproved the 2005 contract form on the basis that it violated § 632.895(7) and was unfairly restrictive and discriminatory.

MercyCare requested a hearing, and in February 2006, OCI concluded that MercyCare could not deny benefits for medical services to covered persons who act as gestational carriers or traditional surrogate mothers. The Commissioner concluded the legislative history indicated that the purpose of the statute was one of inclusiveness and that it would be improper to give an insurer license to inquire into why a woman is pregnant or intends to keep the child. On that basis, the Commissioner upheld the disapproval of the 2005 contract form.

MercyCare petitioned the circuit court, which reversed. OCI appealed, leading to this certification by the District IV Court of Appeals.

The Commissioner argues that great weight deference is appropriate because OCI is charged with the administration of § 632.895(7), and the agency been interpreting insurance-related statutes since 1933.

MercyCare contends OCI never previously interpreted the particular statutory language at issue, and therefore, the issue should be decided by the Supreme Court.

District IV says both parties' positions have some support in case law. It notes that cases frequently repeat the rule that courts should defer to an agency decision only

where the agency's interpretation is one of long standing. See, e.g., County of Dane v. LIRC, 2009 WI 9, ¶16, 315 Wis. 2d 293, 759 N.W.2d 751.

District IV says the "long-standing" requirement seemingly requires that the agency has previously interpreted the particular statutory language at issue. However, it notes in at least some recent cases this court has applied great weight deference giving little or no attention to the "long-standing" requirement. See, e.g., Clean-Wis., Inc. v. PSC, 2005 WI 93, ¶¶37-43, 112-16, 282 Wis. 2d 250, 700 N.W.2d 768.

WISCONSIN SUPREME COURT
WEDNESDAY, MARCH 3, 2010
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed an Iowa County Circuit Court decision, Judge Edward E. Leineweber, presiding.

2008AP2812 Glen D. Hocking v. City of Dodgeville

The court is familiar with the facts giving rise to this case, having recently decided the certification 2007AP1754, Glen D. Hocking v. City of Dodgeville, et al. The issue presented in the certification was whether the defendants, who are or were uphill landowners from the Glen and Louann Hocking, were liable to the Hockings for damages allegedly caused by storm water running from the defendants' property to the Hockings' property. In a decision issued July 9, 2009, this court concluded that the defendants were not liable because they had no duty to abate the alleged nuisance.

Now, the Supreme Court is asked to review Wis. Stat. § 893.89, the 10-year "statue of repose" for actions for injury resulting from improvements to real property.

Some background: In 1978, when Glen and Louann Hocking purchased their home in the Dodgeville, the land surrounding it was undeveloped. By 1992, a subdivision was developed on surrounding land, resulting in the Hockings' home being situated at the bottom of a slope where other homes were built. This configuration caused storm water run-off from city and private property to collect both inside and outside the Hockings' residence, damaging their home and eroding their land.

Over several years, Glen Hocking discussed with city officials his concern with the water drainage problem. The city officials' responses led him to believe the city would take care of the drainage problem. In September 2003, however, a city representative informed him that the city would not be doing anything to stop the excessive water flow onto his property. The Hockings contend mold was discovered in their basement, the walls were unstable, and they were forced to move out.

In 2006, the Hockings sued the City of Dodgeville. The circuit court dismissed the lawsuit under § 893.89 because it was filed more than 10 years after substantial completion of the subdivision.

The Hockings appealed. The Court of Appeals affirmed, determining statements by city officials did not constitute a warranty, and that the city's conduct did not constitute negligence within the meaning of an alternative exception, § 893.89(4)(c).

More specifically, the Hockings ask the Supreme Court to review: (1) whether the city's consistent representations that it would address the Hockings' water drainage issues qualify as an exception under Wis. Stat. § 893.89(4)(b); and (2) whether the city's negligence in maintaining a nuisance on property it owned qualifies as an exception under § 893.89(4)(c).

WISCONSIN SUPREME COURT
WEDNESDAY, MARCH 3, 2010
10:45 a.m.

This is a certification from the Wisconsin Court of Appeals, District III, headquartered in Wausau. The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in St. Croix County Circuit Court, Judge Eric J. Lundell, presiding.

2008AP1303 Roehl Transport Inc. v. Liberty Mutual Ins. Co.

This certification asks the Supreme Court to examine two issues: 1) whether Wisconsin law recognizes a bad-faith claim by an insured against its liability insurer for failure to reasonably defend the insured's unusually high deductible, and; 2) whether attorneys' fees in a bad-faith action must be decided by a jury, or awarded post-trial by the trial court.

Some background, according to the Court of Appeals: Arthur Groth was injured when his vehicle was struck from behind by a Roehl Transport truck. Roehl turned the defense over to its liability insurer, Liberty Mutual, as required by the terms of the insurance policy. The $2,000,000 policy had a $500,000 deductible. According to evidence Roehl presented at trial, Liberty did little to investigate or settle the matter until it became apparent that its own money was at stake.

Liberty initially assigned the case to entry level employees who failed to investigate the accident and failed to offer a settlement even though Groth was facing financial difficulties. Groth eventually was involved in two additional accidents and 10 other injury events that were inadequately investigated, and the independent medical examination was conducted under the erroneous belief that Groth's injuries had to be attributed to only two accidents. A jury awarded Groth $830,400.

Roehl then brought this bad faith action against Liberty to recover the difference between the $500,000 it was required to pay Groth and the amount the case could have settled for if Liberty had investigated and made a reasonable offer to settle. Roehl's expert witnesses and Groth's attorney testified the matter could have been settled for between $100,000 and $133,000. Neither Groth nor Roehl's president testified. The jury awarded Roehl $127,000 damages for Liberty's bad faith activities.

After trial, Roehl requested attorney fees. It calculated that it incurred $678,153 in attorney fees, witness fees and other expenses through trial, and an additional $59,803 in the post-trial motions. The trial court denied attorney fees, concluding attorney fees were damages that had to be established by evidence at trial and presented to the jury. Roehl appeals the denial of attorney fees and Liberty cross-appeals the judgment, contending Wisconsin law does not recognize this type of bad faith action.

A decision by the Supreme Court is expected to clarify Wisconsin law regarding bad-faith claims and to determine whether attorneys' fees must be decided by a jury, or whether they may be awarded post-trial by the trial court.

WISCONSIN SUPREME COURT
WEDNESDAY, MARCH 3, 2010
1:30 P.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed in part and reversed in part, a Milwaukee County Circuit Court decision, Judge Timothy D. Dugan, presiding.

2008AP170 Walter Tatera et al.v. FMC Corporation

In this asbestos-related case, the Supreme Court is asked to clarify several issues related to negligence and the definition of extra-hazardous work.

Some background: Vicki Tatera alleges her husband Walter, who died of malignant mesothelioma, had been exposed to asbestos when he worked for nearly three decades at B&M Machine, a professional machine shop owned by Walter's father.

B&M is an independent contractor that modifies the brake disks manufactured by FMC suppliers. FMC did not manufacture the brake lining but rather purchased that part from brake lining manufacturers. Once the brake lining parts were machined at B&M, they were returned to FMC to be assembled into a final brake system, which was then sold to others for installation in vehicles.

Vicki Tatera sued FMC, claiming negligence and strict liability. The trial court dismissed the action on summary judgment, ruling that Vicki failed to demonstrate a sufficient case for either claim.

The Court of Appeals reversed with respect to negligence but affirmed the dismissal of Vicki's strict liability claim. FMC requests the Supreme Court to review the decision dismissing Vicki Tatera's negligence claim.

On the negligence claim, the Court of Appeals concluded that FMC was not entitled to a dismissal as a matter of law because (1) the Restatement (Second) of Torts § 388 applies to suppliers such as FMC; and (2) Wagner v. Continental Cas. Co., 143 Wis. 2d 379, 401, 421 N.W.2d 835 (1988), addressing injuries sustained by an independent contractor, does not bar Vicki's negligence claims.

FMC asks the Supreme Court to review three issues: (1) whether the facts fit within the two narrow exceptions to the general rule that a principal employer is not liable in tort for injuries sustained by an employee of an independent contractors, as set forth in Wagner; (2) whether an affirmative act of negligence would include failure to warn premised upon § 388; and (3) whether abnormally dangerous or extra-hazardous work--as defined in Wagner--include machining asbestos-containing friction disks?

WISCONSIN SUPREME COURT
TUESDAY, MARCH 9, 2010
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court decision, Judge Michael B. Brennan, presiding.

2008AP89 Michael Pries v. Raymond McMillon

This case arises from a dispute between Raymond McMillon, a State Fair Park employee, and Michael Pries, an inmate of the House of Correction who was injured while working at State Fair Park as part of an inmate work crew. The Supreme Court is asked to review law related to public officer immunity and how exceptions to the law may apply to the facts of this case.

Some background: Pries sustained injuries on Sept. 18, 2005 when sections of metal horse stalls fell on him while he was dismantling the stalls with other inmates in the horse barn at State Fair Park.

According to testimony from Pries, another inmate worker and the correctional officer who supervised them, numerous sections of the stalls fell after McMillon tried to loosen a piece of a stall by standing or jumping on it and then shaking it. At the time the sections fell, they were not chained to the wall as recommended in the instructions for disassembly.

McMillon denied he was near the stalls when they began to fall, but there's no dispute the sections fell, causing Pries to suffer a broken foot and other injuries. McMillon was the only State Fair Park employee in the area.

Pries sued McMillon and Wisconsin State Fair Park's liability insurer, alleging that Pries was injured when McMillon, while in the scope of his employment, unexpectedly and negligently caused the section to collapse and fall on Pries.

McMillon filed motions to dismiss and for summary judgment, asserting discretionary act immunity – a qualified immunity for a public official's act, granted when the act in question required the exercise of judgment in carrying out official duties. Both motions were denied.

The circuit court concluded that because McMillon's duty was ministerial, governmental immunity did not shield him from liability. The trial court cited portions of McMillon's deposition, in which he said the same dismantling process is followed each time, and the employees do not have the ability to change the process. The circuit court applied the ministerial duty exception to public officer immunity as set out in Lodl v. Progressive Northern Ins. Co., 2002 WI 71, 253 Wis. 2d 323, 646 N.W.2d 314.

The trial court rejected Pries's contention that the State Fair Park's failure to properly train or supervise the inmate workers was a known and present danger giving

rise to a duty to cease disassembly. It said there was no evidence of previous danger and therefore no evidence the danger was known. The court awarded Pries judgment of $10,000 pain and suffering and $4,150.42, plus costs and fees.

The Court of Appeals agreed McMillon was not immune, but did so on different grounds; it applied the known danger exception set out in Cords v. Anderson, 80 Wis. 2d 525, 259 N.W.2d 672 (1977).

McMillon poses one issue for review by the Supreme Court: Whether a public employee's duty falls within the exception to public officer immunity recognized in Cords, where no life-threatening or perilous situation existed, no history of previous injury in similar circumstances was shown, and the employee had multiple options available in deciding how to carry out the duties in question.

A decision by the Supreme Court could clarify the outlines of the known danger exception to governmental immunity.

WISCONSIN SUPREME COURT
TUESDAY, MARCH 9, 2010
10:45 a.m.

This is a certification from the Wisconsin Court of Appeals, District II, headquartered in Waukesha. The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Fond du Lac County Circuit Court, Judge Dale L. English, presiding.

2008AP3135 Society Ins. and James Meyer, Inc v. LIRC

This certification asks the Supreme Court to review if the Legislature violated the constitutional rights of employers and their worker's compensation carriers by retroactively shifting the burden of ongoing disability compensation from the state to the insurer as provided in Wis Stat. §§ 102.17(4) and 102.66(1), amended effective April 1, 2006.

Some background: On June 25, 1982, Gary Liska sustained a work-related injury to his right leg that required amputation below the knee. Society Insurance paid temporary total disability benefits intermittently from June 25, 1982, through June 12, 1990. It also paid permanent partial disability benefits for each week that Liska did not receive temporary disability. Society paid the permanent disability benefits in advance on Feb. 18, 1983.

According to the worker's compensation law as it read at the time, specifically the 12-year statute of limitations, Society's liability for Liska's medical claims would have expired in 2002, and subsequent payments would have been paid from the Work Injury Supplemental Benefit Fund (WISBF). See Wis. Stat. § 102.17(4) (2003-04).

On Feb. 25, 2004, Liska filed a claim for additional medical expenses in excess of $14,000. An administrative law judge (ALJ) determined that Society was liable for the ongoing expenses in light of the revised statute of limitations, which shifts liability for expenses accruing after 12 years to the worker's compensation insurer unless those expenses derive from an "occupational disease." See Wis. Stat. § 102.17(4).

Society appealed the ALJ decision to the Labor and Industry Review Commission (LIRC), which affirmed and adopted the ALJ decision as its own. Society then sought review in the circuit court, arguing that retroactive application of the statute of limitations was unconstitutional.

The circuit court agreed, holding that retroactive application violates due process and the contract clause. WISBF appealed, leading to this certification from the District II Court of Appeals.

A decision by the Supreme Court could clarify the constitutional limitations of Wis Stat. §§ 102.17(4) and 102.66(1), amended effective April 1, 2006.

WISCONSIN SUPREME COURT
TUESDAY, MARCH 9, 2010
1:30 p.m.

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation investigates, and, if warranted, prosecutes the attorney. A referee - a court-appointed attorney or reserve judge - hears the discipline cases and makes recommendations to the Supreme Court. The lawyer involved in this case has a practice in Stevens Point.

2009AP661-D Office of Lawyer Regulation v. Stanton E. Thomas

In this case, the Office of Lawyer Regulation (OLR) has appealed the referee's findings that the OLR failed to meet its burden of proof on two counts of misconduct alleged in its complaint.

The misconduct alleged in the OLR's complaint arose out of Stanton E. Thomas' representation of Thomas Ludwig, who retained Thomas in the fall of 2004. Prior to his retaining Thomas, Ludwig owned 50 percent, or 100 of the 200 units, of Crocus Estates, LLC. Ludwig's then-business partner, John Ford, owned the other 50-percent interest in Crocus. In 2002 Ludwig had executed a promissory note to a third party. The note was secured by 98 of Ludwig's Crocus units. Ludwig assigned his two remaining Crocus units to Ford. Ludwig and Ford agreed that if and when the promissory note was satisfied, Ford would assign the 2 units back to Ludwig.

Ludwig did not pay the amounts due on the promissory note. The third party purchased the 98 Crocus units and cancelled the promissory note. The third party and his attorney wrote "Paid in Full" on the promissory note. Ludwig and the third party subsequently entered into an agreement which provided that Ludwig would have the right to repurchase the 98 Crocus units on or before November 2005. Ford consented to the repurchase agreement. Thomas was not involved in any of these transactions.

When Ludwig retained Thomas, Ludwig indicated he was a two-unit owner in Crocus, and Thomas's own review of the pertinent documents convinced him that was true. At Ludwig's request, Thomas wrote Ford a letter asking that he transfer the 2 units back to Ludwig. Ford refused. Thomas sued Ford on Ludwig's behalf. The principal reason for filing the suit was that the deadline for Ludwig to repurchase the 98 Crocus units was approaching and he needed financial information about Crocus that was in Ford's sole possession. While the suit was pending Ludwig decided not to repurchase the 98 Crocus units from the third party so he dismissed the case against Ford. The stipulation and order for dismissal expressly reserved all claims Ludwig might have against Crocus or anyone other than Ford individually.

Although Ludwig was no longer interested in repurchasing the 98 Crocus units, the two units he had assigned to Ford were worth approximately $20,000. The basis for the OLR's complaint was a letter that Thomas wrote to a Crocus accountant in August 2007 saying:

> It recently came to my attention that my client, Tom Ludwig, did not receive a schedule K on the above entity for the last few years. My client is a 1% 2-unit owner. [The third party] is a 49% 98-unit owner. John Ford is a 50% 100-unit owner. See enclosed. Please advise.

The OLR alleged that Thomas's statement that Ludwig was a 1% owner of Crocus was a false statement of material fact and amounted to conduct involving dishonesty, fraud, deceit or misrepresentation. The referee disagreed, saying Thomas had no intent to deceive anyone and the fact the letter ended with the phrase "Please advise" was significant because it showed Thomas was just trying to get information about who owned the disputed 1-percent interest in Crocus.

The OLR has appealed, arguing that Thomas's letter to the accountant did contain a false statement of material fact. The OLR asserts that a private reprimand would be an appropriate sanction for Thomas's misconduct.

The Supreme Court is expected to decide whether Thomas violated any Rules of Professional Conduct and, if so, the appropriate penalty.